

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
JUN - 2 2011
CLERK, U.S. DISTRICT COURT
by _____
Deputy

BRENDA CARNAHAN,

§

§

Plaintiff,

§

§

VS.

NO. 4:11-CV-223-A

§

BANK OF AMERICA, NATIONAL
ASSOCIATION, ET AL.,

§

§

Defendants.

§

§

MEMORANDUM OPINION

and

ORDER

The court has not been persuaded that it has subject matter jurisdiction over the above-captioned action. Therefore, the court is ordering the action remanded to the state court from which it was removed.

I.

Background

On February 28, 2011, the above-captioned action was initiated by Brenda Carnahan against defendants, Bank of America, National Association, and Wells Fargo Bank, N.A., in the District Court of Tarrant County, Texas, 67th Judicial District. By notice of removal filed April 6, 2011, defendants removed the

action to this court, alleging that this court had subject matter jurisdiction by reason of diversity of citizenship, as contemplated by 28 U.S.C. § 1332, and that the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, as contemplated by § 1332(a).

Defendants contend in the notice of removal that although the petition does not allege a specific amount in controversy, a review of the petition makes clear that the amount in controversy exceeds the jurisdictional amount. This conclusion is based on the unspecified amount of damages plaintiff seeks as to her state law claims, as well as her claims for attorney's fees and injunctive relief. More specifically, defendants contend that

through her request for injunctive relief, Plaintiff seeks to prevent the foreclosure and repossession of the Property. The amount in controversy, in an action for declaratory or injunctive relief, is the value of the right to be protected or the extent of the injury to be prevented. When the right to property is at issue courts look to the value of the property to determine whether the minimum amount in controversy has been met for jurisdictional purposes. Because Plaintiff seeks to have removed any right, title or interest that Defendants have in the Property, the value of that right must be, at a minimum, the current value of the Property. Significantly, the most recent tax appraisal value assigned to the Property is well in excess of the jurisdictional limits of this Court. Exhibit E. Accordingly, it is more likely than not

that the value of the Property remains well in excess of \$75,000.

Notice of Removal at 5-6 (internal quotation marks, citations, and footnote omitted). Thus, in defendants' view, because the Tarrant Appraisal District purportedly appraised the property at \$162,400, that amount, combined with plaintiff's other potential recovery, exceeds the \$75,000 jurisdictional threshold.

Because of a concern that defendants had not provided the court with information that would enable the court to find the existence of the requisite jurisdictional amount, the court on April 8, 2011, ordered defendants to file an amended notice of removal, together with supporting documentation, showing that the amount in controversy exceeds the jurisdictional amount.

Defendants filed their amended notice of removal on April 25, 2011. In addition to the arguments raised in the original notice of removal, defendants contended that because plaintiff has called into question the validity of the loan and right to title of the property, and because she has alleged that the note has likely been paid and discharged, she is in essence asking the court to cancel and void the note. Under such circumstances,

where the plaintiff challenges the validity of an agreement, "the value of the agreements and/or the property at issue in the agreements controls the amount in controversy." Am. Notice of Removal at 8 (citing Nationstar Mortg. LLC v. Knox, 351 F. App'x 844, 848 (5th Cir. 2009)). Defendants also rely on plaintiff's request for permanent injunctive relief to prevent foreclosure, which if granted would result in plaintiff obtaining title to the property without having to pay the remaining amounts due on the note, or, if denied, would allow defendants to foreclose, causing plaintiff to lose title to the property; the value in either case, defendants contend, exceeds \$75,000.

Defendants further rely on the unspecified amount of damages and attorney's fees plaintiff seeks as to her state law claims, all of which, in defendants' view, causes the amount in controversy to exceed the jurisdictional minimum.

II.

Basic Principles

The court starts with a statement of basic principles

announced by the Fifth Circuit:

"The removing party bears the burden of showing that federal subject matter jurisdiction exists and that removal was proper."

Manguno v. Prudential Prop. & Cas. Ins. Co., 276 F.3d 720, 723

(5th Cir. 2002). "Moreover, because the effect of removal is to deprive the state court of an action properly before it, removal raises significant federalism concerns, which mandate strict construction of the removal statute."¹ Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F.3d 362, 365-66 (5th Cir. 1995).

Any doubts about whether removal jurisdiction is proper must therefore be resolved against the exercise of federal jurisdiction. Acuna v. Brown & Root Inc., 200 F.3d 335, 339 (5th Cir. 2000).

To determine the amount in controversy, the court ordinarily looks to the plaintiff's state court petition. Manguno, 276 F.3d

¹The removal statute, 28 U.S.C. § 1441(a) provides, in pertinent part, that:

[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(emphasis added).

at 723. If it is not facially apparent from the petition that the amount in controversy exceeds the required amount, the removing party must set forth summary judgment-type evidence, either in the notice of removal or in an affidavit, showing that the amount in controversy is, more likely than not, greater than \$75,000. Id.; Allen v. R & H Oil & Gas Co., 63 F.3d 1326, 1335 (5th Cir. 1995). The amount in controversy is measured from the perspective of the plaintiff. See Garcia v. Koch Oil Co. of Texas Inc., 351 F.3d 636, 640 n.4 (5th Cir. 2003).

III.

The True Nature of Plaintiff's Claims

The petition by which plaintiff initiated this action in the state court does not specify a dollar amount of recovery sought, nor does it define in any way the value of the right sought to be protected or the extent of the injury sought to be prevented. Rather, the allegations of the petition are typical of many state court petitions that are brought before this court by notices of removal in which the plaintiff makes vague, general, and obviously legally baseless allegations in an attempt to frustrate

the procedures a lender is pursuing, or has pursued, to regain possession of residential property the plaintiff used as security for the making of a loan.

As the court has been required to do in other cases of this kind, the court has undertaken an evaluation of the true nature of plaintiff's claims. Having done so, and having considered the authorities and arguments cited by defendants in the amended notice of removal, the court remains unpersuaded that the amount in controversy exceeds the required jurisdictional minimum.²

In the case at bar, plaintiff admits she executed a note, secured by a deed of trust, for purchase of the property at issue. Although the petition uses phrases such as plaintiff was "allegedly" and "ostensibly" in default, plaintiff also admits she attempted to obtain a loan modification from Wells Fargo Bank for more than eighteen months but was frustrated in those efforts by Wells Fargo. Such allegations are tantamount to plaintiff's

²Defendants rely on Nationstar Mortg. LLC v. Knox, 351 F. App'x 844 (5th Cir. Aug. 25, 2009), a case which is not precedent. The pertinent portion of Nationstar, in turn, relies on Waller v. Prof'l Ins. Corp., 296 F.2d 545, 547-48 (5th Cir. 1961). This court has previously explained its reasoning for finding Waller inapposite to determining the amount in controversy in cases such as the instant action, see Ballew v. America's Servicing Co., No. 4:11-CV-030-A, 2011 WL 880135 (N.D. Tex. Mar. 14, 2011), and defendants have failed to persuade the court otherwise.

admission that any claims she may have to the property would be subject to the note and deed of trust--admissions that are inconsistent with any claim to outright ownership of the property.

All of defendants' arguments as to amount in controversy can be summed up as contending that either the value of the property or the amount of plaintiff's outstanding indebtedness on the note establishes the amount in controversy. Although defendants have provided the court with documents purporting to show that the appraised value of the property and the amount of plaintiff's indebtedness each exceeds \$75,000, the authorities cited in the amended notice of removal fail to persuade the court that either of these amounts constitutes the amount in controversy.

No information has been provided to the court that would enable the court to place a value on whatever interest plaintiff seeks to protect by this action. Thus, defendants have not shown by a preponderance of the evidence that the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs. Consequently, the court lacks subject matter jurisdiction over the action, and it should be remanded to the state court from

which it was removed.

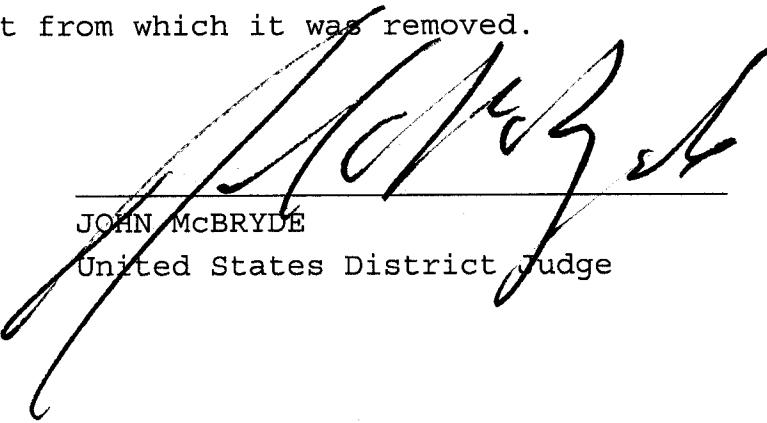
IV.

Order

Therefore,

The court ORDERS that this action be, and is hereby,
remanded to the state court from which it was removed.

SIGNED June 2, 2011.


JOHN McBRYDE
United States District Judge